IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2152 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT INNS PVT. LTD.

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR SV RAJU with MR AY KOGJE for Petitioners

MR RR MARSHALL for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/04/2000

ORAL JUDGEMENT

#. The petitioner, by this petition under Article 226 of the Constitution, challenges the validity, legality and correctness of the letter/ notice dated 4.2.98, annexure-E of the respondent-Ahmedabad Municipal Corporation under which it has declined to grant health

certificate to the petitioner for hotel.

#. The facts of the case in brief are that Hotel Midland (Mona Hotels Pvt. Ltd.), a defaulting unit has been purchased by petitioner in open auction from the Gujarat State Financial Corporation. An agreement without possession was entered into between petitioner No.1 and Gujarat State Financial Corporation with respect to this defaulting unit on 14th August 1997. As per this agreement, the petitioner No.1 was required to pay Rs.86.25 lacs as down payment and remaining Rs.178.75 lacs were to be paid within three years in twelve quarterly installments. It is the grievance of the petitioners that the petitioner No.1 could not commence its business within stipulated time on account of number of hurdles including non granting of health licence by respondent - Ahmedabad Municipal Corporation on the ground of outstanding dues of municipal taxes of erstwhile owner of the defaulting unit. It is not in dispute that possession of this defaulting unit was handed over to petitioner No.1 on 16th August 1997by the Gujarat State Financial Corporation. The petitioners, as against the demand of arrears of municipal taxes in respect of this property paid by cheque in all Rs.7.50 lacs on different dates, the details of which have been given out in para-12 of the special civil application. As the remaining amount of dues has not been paid, this health certificate has not been given to the petitioner by the Corporation. Hence they have approached to this court by this special civil application.

#. The Corporation has contested this special civil application. A detailed reply to the special civil application has been filed in which it is stated that it is the liability of the petitioner to pay the outstanding dues of the municipal taxes of the erstwhile owner of the unit as per the agreement entered into between the petitioner and the State Financial Corporation.

#. The learned counsel for the petitioner relying on some of the decisions of the Hon'ble Supreme Court and of this court, including the decision of the apex court in the case of Isa Marbles, contended that the municipal tax liabilities of the erstwhile owner of the defaulting unit cannot be made a ground for non issue of licence to the petitioners by Ahmedabad Municipal Corporation. In his submission, the petitioners are liable to pay municipal taxes for this property from the date on which they have entered into possession thereof in pursuance of the agreement for sale as entered into between them and the State Financial Corporation. So from 16th August, 1997,

what the learned counsel for the petitioners contends that at the most, municipal tax liabilities can be the liability of the petitioners in respect of this unit and not for the dues of the same for the period earlier to this date. It has next been contended that in fact, it is a case where under the threat and coercion, the respondent - Corporation's officers have extorted money from the petitioner. Referring to clause-5 of the agreement entered into between petitioner No.1 and State Financial Corporation, the learned counsel for the petitioners submits that it only relates to the future liability of the petitioners for payment of municipal taxes. This term of agreement in his submission has totally been misconstrued and misunderstood by the Ahmedabad Municipal Corporation.

#. Mr.R.R.Marshall, learned counsel for Ahmedabad Municipal Corporation contended that clause-5 of the agreement of sale of this unit to the petitioner by the State Financial Corporation is very specific, clear and in ambiguous term provides that for all the dues of the municipal taxes it is the liability of the petitioner to make payment thereof to the Ahmedabad Municipal Corporation. He read out in extenso the aforesaid clause. It has next been contended that the petitioners have also understood this clause to be as of their liability to pay these dues of the municipal taxes to the corporation and in furtherance of that, the petitioner No.1 paid in all Rs.7.5 lacs on different dates by cheques. It has next been contended that now it is a different matter that after payment thereof, the petitioners have resiled from commitment and come up with the case that this amount has been extorted from them by the officers of the Corporation by coercion or threat. The petitioner No.1 is a company and petitioner No.2 is a literate person. In case it would have been really a case of threat or coercion, then they should have made complaint thereof immediately to the police or should have filed a complaint in the court or should have come up before this court. The post dated cheques have been given and subsequently a dishonest intention has developed and this special civil application has been filed in the court. Otherwise also, the learned counsel for the respondent-Corporation, submitted that the petitioner has not come up with clean hands before this court. It is contended that it is a contractual matter in between the Gujarat State Financial Corporation and the petitioner. The term of contract if does not fasten any liability for payment of dues of the municipal taxes upon them then it is a matter in between the petitioner and Corporation for which remedy would have been to file

suit and recovery of this amount from the said Corporation. The Municipal Corporation is not a party to that agreement nor the State Financial corporation is made a party to this writ petition. Lastly it is contended that otherwise also, this writ petition is wholly misconceived as in case the petitioner is not liable to pay the dues of the municipal taxes to the Ahmedabad Municipal Corporation, then they should have raised the objection before the Corporation and should have taken a decision from the Corporation and that order is also not final, but was appealable.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. I do not find any merits in the contention of the learned counsel for the petitioner that cheques of Rs.7.5 lacs have been taken by the officers of the Municipal Corporation under coercion and threat. These cheques were given by petitioner on 5.1.98 or 10.2.98. The petitioner could have made hue and cry in case it would have been really a fact. Otherwise also, in case the petitioners consider that this amount is not payable, they could have come up before this court or could have gone to the civil court by filing appropriate proceedings but that has not been done. Even if threat has been given to seal the premises then too, the matter could have been brought before this court as it is done everyday by the litigants. It is not unknown to this court that even in urgent matters, litigants are coming up in the odd hours to the residence of judges for taking urgent orders. The affidavit has been filed by petitioner No.2 and averments made in para-12 are stated to be true to his personal knowledge but the petitioner No.2 being an interested person, merely on the basis of his own affidavit, more so when it is controverted by respondent by filing affidavit, it is difficult to accept the same. It is a case where this theory of extortion of money under undue pressure or threat of sealing of the premises cannot be accepted. It is a case where this amount has been paid by the petitioners voluntarily. Even if it is taken that this amount has been paid under protest, it cannot be said to be a case of undue pressure or threat of sealing of the premises.

#. I find sufficient merits in the contention of the learned counsel for the respondent-Corporation that in case the liability of the petitioner to pay the dues of the municipal taxes of the erstwhile owner of the defaulting unit do not lie upon them, proper and appropriate course would have been to raise this

objection before the municipal corporation and take the decision thereon. Thereafter, the petitioner has appropriate remedy of fziling of the appeal etc. in the Corporation itself or before the District Court. It is not unknown that all the orders passed by the corporation in respect thereof are appealable. This writ petition under Article 227/ 226 of the Constitution is otherwise not maintainable as the petitioners have adequate efficacious alternative remedy available in the matter. The petitioner has come up with the case that this amount has been paid under protest and when substantial amount has been paid under protest, the petitioners could have paid rest of the amount and could have taken the licence and this objection could have been raised and if ultimately they succeed in the matter the amount would have been ordered to be paid back to them or it would have been adjusted in future towards municipal tax liability of the petitioners. This has not been done. This approach of the petitioners directly to this court in such matter is difficult to appreciate. From the amended part of the special civil application, I find that now the petitioner also is disputing the correctness of the calculation made of dues of the municipal taxes of the erstwhile owner of the defaulting unit. If it is a case of wrong calculation of the amount the remedy to the petitioners would have been to approach to the corporation. From the letters of the petitioners, I find that the protest has been made and they have stated that cheques may not be deposited before they seek clarification of tax liability of previous owner from the appropriate authorities. That has also not been done. Both the counsel for the parties made the contentions with respect to clause-5 of the agreement, but I do not consider it to be appropriate to go on and decide this question here as otherwise it may prejudice the case of either of the parties where the petitioners approach to the corporation. The tax demand is made and in such matters, even if the tax is paid under protest, proper course would have been for the petitioners to get adjudication, re.: liability to pay taxes from the competent authority in the corporation and if ultimately decision goes against them, to file appeal etc. which is available to them under the Act.

#. In the result, this special civil application fails and the same is dismissed. However, dismissal of this writ petition will not come in the way of the petitioners to file a detailed petition in respect to their grievances that they are not liable to pay the dues of the municipal taxes in respect of property of the defaulting erstwhile unit to the Corporation. In case

such a representation is made by petitioners, the Commissioner, Municipal Corporation, Ahmedabad, is directed to decide the same in accordance with law within a period of two months of receipt thereof. In case the Commissioner is satisfied that the petitioners are not liable to pay the taxes, then accordingly order may be passed and whatever amount paid by petitioner to the Corporation either be refunded back to it or be adjusted in future municipal tax liability of the petitioner in respect of this property. Where the Commissioner decides the matter against the petitioners, the petitioners are free to file an appeal against that order before the appropriate forum or to avail other alternative remedy provided. Otherwise, they are free to approach to this court where no alternative remedy is available to them. Rule discharged. The petitioners are directed to pay Rs.5,000/= as costs of this writ petition to the Ahmedabad Municipal Corporation.

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(sunil)